

September 25, 2006

The Honorable Adam Schiff  
326 Cannon House Office Building  
Washington, DC 20515

The Honorable Jeff Flake  
424 Cannon House Office Building  
Washington, DC 20515

RE: Opposition to H.R 5825 (the Electronic Surveillance Modernization Act)

Dear Representatives Schiff and Flake:

We write on behalf of the Center for Democracy and Technology, a non-partisan public policy organization, to express our opposition to H.R. 5825, the "Electronic Surveillance Modernization Act," which was reported out of the House Judiciary Committee last week.

Proponents and some press accounts have mischaracterized this bill as providing judicial review of the President's program and as "modernizing" the Foreign Intelligence Surveillance Act. In fact, this bill would prevent meaningful judicial review of the President's program and would both ratify and expand to an unprecedented level the government's authority to wiretap Americans without a warrant.

By defining large categories of electronic surveillance as not being "electronic surveillance" covered by FISA, the bill would permit the National Security Agency to turn its vacuum cleaners on American citizens and create a vast database of information, which the government could data mine at will, outside any judicial or congressional oversight, in a fashion reminiscent of the Total Information Awareness program.

The bill also would immunize from liability any person from any activity related to any electronic surveillance program that was intended to protect the US from a terrorist attack. This provision would result in the dismissal of all pending cases challenging the program and would preclude anyone in the future from bringing an action against the government challenging the legality of the program.

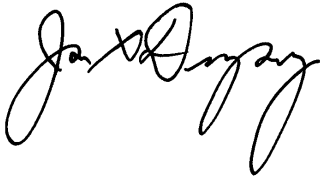
None of these changes is necessary to meet the terrorist threat. In fact, a truly updated and technology-neutral approach would permit the government, with a court order, to intercept communications regardless of the sophistication of the terrorists.

We continue to support the NSA Oversight Act, which you co-sponsored with Representative Flake. Unlike the Wilson bill, your bill would return the courts and the Congress to their proper places as equal branches of government, this bill restores the constitutional balance of power that the Administration's warrantless surveillance program has upended.

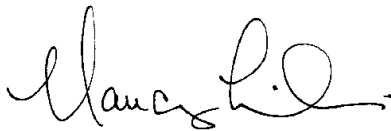
Sincerely,

A handwritten signature in cursive script that reads "Leslie Harris".

Leslie Harris  
Executive Director

A handwritten signature in cursive script that reads "James X. Dempsey".

James X. Dempsey  
Policy Director

A handwritten signature in cursive script that reads "Nancy Libin".

Nancy Libin  
Staff Counsel